

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Charles Clayton,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	
vs.	)	
	)	
Metropolitan Life Insurance Co., et. al.,	)	
	)	
Defendants	)	
	)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 et seq., the Defendant DaimlerChrysler Corporation ("Chrysler") hereby removes from the Superior Court of Middlesex County, Massachusetts to the United States District Court for the District of Massachusetts, the state court action entitled *Charles Clayton v. Metropolitan Life Insurance Co., et al.*, Civil Action No. 05-0925 ("*Clayton* action"). As grounds for removal, Chrysler states the following:

1. Plaintiff originally commenced this civil action on April 28, 2005, alleging bodily injury resulting from exposure to asbestos and asbestos-containing materials. A copy of the Plaintiff's Complaint is attached hereto as composite Exhibit A pursuant to the provisions of 28 U.S.C. § 1446 (a).
2. In Plaintiff's Complaint, Plaintiff Charles Clayton identified having exposure to asbestos-containing products at Federal Enclaves. Accordingly, this action falls within the Courts' original federal question jurisdiction pursuant to 28 U.S.C. § 1331.
3. Specifically, the Complaint provides that Plaintiff Charles Clayton was

exposed to asbestos-containing products while working as a food service worker aboard various ships at the Portsmouth Naval Shipyard, Kittery, Maine, in approximately 1953. See Exhibit A.

4. Pursuant to 28 U.S.C. § 1331, this Court has subject matter jurisdiction over the claims of Plaintiff in the *Clayton* action, because such action asserts claims arising under the "Federal Enclave" Clause of the U.S. Constitution, Art. I, Sec. 8, cl. 17, thereby giving rise to federal question jurisdiction. Accordingly, removal is appropriate pursuant to 28 U.S.C. § 1441(a)(b) and (c). See *Akin v. Ashland Chemical Co.*, 156 F.3d 1030, 1034 n. 1 (10th Cir. 1998); *Akin v. Big Three Industries, Inc.*, 851 F. Supp. 819, 822 (E.D. Tex. 1994); *Reed v. Fina Oil & Chem. Co.*, 995 F. Supp. 705, 713 (E.D. Tex. 1998); and *Hines v. Acand S, Inc.*, 128 F. Supp.2d 1003 (N.D. Tex. 2001).


5. Removal of this action is timely under the provisions of 28 U.S.C. § 1446(b), as this Notice of Removal was filed within thirty (30) days of receipt of information from which it first could be ascertained that the case was removable. See *Hines v. Accnds, Inc.*, 128 F. Supp.2d 1003 (N.D. Tex. 2001).

6. The remaining claims in this action are so related to the federal claims that they form part of the same transaction or controversy. Accordingly, this Court has supplemental jurisdiction over such claims pursuant to 28 U.S.C. § 1367(a).

7. Pursuant to 28 U.S.C. § 1446(d), all adverse parties are being provided with written notice of removal, and a copy of this Notice of Removal is being filed with the Clerk of the Superior Court, Middlesex County, Massachusetts.

This the 23 day of May 2005.

DAIMLERCHRYSLER CORPORATION  
By Its Attorneys,  
CAMPBELL, CAMPBELL EDWARDS  
& CONROY

  
Charles K. Mone, BBO#: 351660  
One Constitution Plaza  
Boston, MA 02129  
(617) 241-3000

**CERTIFICATE OF SERVICE**

I, Charles K. Mone, Counsel for the Defendant, do hereby certify that on May 23, 2005, a true copy of the above document was served on the plaintiff via Federal Express and email and on all defendants via email.

  
Charles K. Mone

# EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX: ss.

SUPERIOR COURT  
DEPARTMENT OF THE  
TRIAL COURT

-----X  
CHARLES CLAYTON,

Plaintiff,

Civil Action  
No. 05-0925

v.

COMPLAINT

METROPOLITAN LIFE INSURANCE COMPANY  
EASTERN REFRACTORIES COMPANY, INC.  
ECKEL INDUSTRIES, INC.

PLAINTIFF DEMANDS  
A TRIAL BY JURY

P.T. BRAKELINING COMPANY, INC.

OWENS-ILLINOIS, INC.

OWENS-ILLINOIS GLASS COMPANY

RAPID-AMERICAN CORPORATION

GARLOCK, INC.

INGERSOLL-RAND COMPANY

JOHN CRANE, INC.

UNIROYAL, INC.

BAYER CROPSCIENCE, INC. f/k/a

AMCHEM PRODUCTS, INC.

PARKER-HANNIFIN CORPORATION

ITT INDUSTRIES, INC., AS

SUCCESSOR TO GOULDS PUMPS, INC.

UNION CARBIDE CORPORATION

HONEYWELL INTERNATIONAL INC. f/k/a ALLIEDSIGNAL,

INC. f/k/a THE BENDIX CORPORATION

BORG-WARNER CORPORATION n/k/a BURNS

INTERNATIONAL SERVICES CORPORATION

DAIMLERCHRYSLER CORPORATION

FORD MOTOR COMPANY

GENERAL MOTORS CORPORATION

PNEUMO-ABEX CORPORATION

HAMPDEN AUTOMOTIVE SALES CORP.,

Defendants.  
-----X

Now comes the plaintiff, by his attorneys, and  
files the following complaint:

1. PARTY PLAINTIFF

Plaintiff, Charles Clayton, a single person,  
resides at 3 Hillcrest Road, Apt. #2, Foxboro,

Massachusetts 02035.

2. PARTY DEFENDANTS

2A. The defendant, Metropolitan Life Insurance Company (hereinafter "Metropolitan"), is a foreign corporation which does or has done business in the Commonwealth of Massachusetts.

2B. The defendant, Eastern Refractories Company, Inc., is a corporation organized under the laws of the Commonwealth of Massachusetts with its principal place of business located in the Commonwealth of Massachusetts.

2C. The defendant, Eckel Industries, Inc., is a corporation organized under the laws of the Commonwealth of Massachusetts with a principal place of business located in the Commonwealth of Massachusetts.

2D. The defendant, P.T. Brakelining Company, Inc., is a Massachusetts corporation with a principal place of business in the Commonwealth of Massachusetts and has conducted business in the Commonwealth of Massachusetts.

2E. The defendant, Owens-Illinois, Inc., is a corporation incorporated under the laws of the State of Ohio, having a principal place of business outside the Commonwealth of Massachusetts, and has conducted business in the Commonwealth of Massachusetts.

2F. The defendant, Owens-Illinois Glass Company, is a corporation incorporated under the laws of the

State of Ohio, having a principal place of business outside the Commonwealth of Massachusetts and has conducted business in the Commonwealth of Massachusetts.

2G. The defendant, Rapid-American Corporation, is the legal successor to the Philip Carey Manufacturing Company and is a corporation incorporated under the laws of the State of Delaware, having a principal place of business outside the Commonwealth of Massachusetts, and on information and belief has conducted business in the Commonwealth of Massachusetts itself and through its predecessor corporation.

2H. The defendant, Garlock, Inc., is a foreign corporation having a principal place of business in the State of New York and has conducted business in the Commonwealth of Massachusetts.

2I. The defendant, Ingersoll-Rand Company, is a New Jersey corporation having a principal place of business in New Jersey and is registered to and has conducted business in the Commonwealth of Massachusetts.

2J. The defendant, John Crane, Inc., is a Delaware corporation with a principal place of business in the State of Illinois and has conducted business in the Commonwealth of Massachusetts.

2K. The defendant, Uniroyal, Inc., is a foreign corporation with a principal place of business outside



the Commonwealth of Massachusetts and has conducted business in the Commonwealth of Massachusetts.

2L. The defendant, Bayer CropScience, Inc. f/k/a Amchem Products, Inc., is a Delaware corporation having a principal place of business in Pennsylvania which has conducted business in the Commonwealth of Massachusetts.

2M. The defendant, Parker-Hannifin Corporation, is a corporation incorporated under the laws of the State of Ohio having a principal place of business in the State of Ohio and has conducted business in the Commonwealth of Massachusetts.

2N. The defendant, ITT Industries, Inc., as Successor to Goulds Pumps, Inc., is a foreign corporation incorporated under the laws of the State of Indiana having a principal place of business in White Plains, New York, and has conducted business in the Commonwealth of Massachusetts.

2O. The defendant, Union Carbide Corporation, is a Connecticut corporation with a principal place of business outside the Commonwealth of Massachusetts and has conducted business in the Commonwealth of Massachusetts.

2P. The defendant, Honeywell International Inc. f/k/a AlliedSignal, Inc., f/k/a The Bendix Corporation, is a Delaware corporation having a principal place of business outside the Commonwealth of Massachusetts and



has conducted business in the Commonwealth of Massachusetts.

2Q. The defendant, Borg-Warner Corporation n/k/a Burns International Services Corporation, is a Delaware corporation with a principal place of business in the State of Illinois and has conducted business in the Commonwealth of Massachusetts.

2R. The defendant, DaimlerChrysler Corporation, is a Delaware corporation with a principal place of business in the State of Michigan which has conducted business in the Commonwealth of Massachusetts.

2S. The defendant, Ford Motor Company, is a Delaware corporation with a principal place of business in the State of Michigan and has conducted business in the Commonwealth of Massachusetts.

2T. The defendant, General Motors Corporation, is a Delaware corporation with a principal place of business in the State of Michigan and has conducted business in the Commonwealth of Massachusetts.

2U. The defendant, Pneumo-Abex Corporation, as Successor in Interest to Abex Corporation, is a foreign corporation, with a principal place of business outside the Commonwealth of Massachusetts which has conducted business in the Commonwealth of Massachusetts.

2V. The defendant, Hampden Automotive Sales Corp., is a corporation incorporated under the laws of the Commonwealth of Massachusetts, having a principal

place of business at 117 Heath Street, Boston, Massachusetts.

As used in this Complaint, the term "defendant" shall include any party defendants identified in paragraphs 2A-2V hereof, and their predecessors, which shall include, but is not limited to, any person, corporation, company or business entity: which formed part of any combination, consolidation, merger or reorganization from which any party defendant was created or was the surviving corporation; whose assets, stock, property, products or product line was acquired by any party defendant; whose patent rights, trademark rights, trade secrets or goodwill was acquired by any party defendant; or, which was dominated or controlled by any party defendant to such an extent that said party defendant was the "alter ego" of said corporation.

3. The plaintiff's cause of action arises from the defendants: (a) transacting business in Massachusetts; (b) contracting to supply and/or sell goods in Massachusetts; (c) doing or causing a tortious act to be done within Massachusetts; and/or, (d) causing the consequence of a tortious act to occur within Massachusetts.

4. Plaintiff, Charles Clayton, was exposed to defendants' asbestos and asbestos-containing materials while working as a mechanic from approximately 1938 to

1948; and as a food service worker aboard various ships at the Portsmouth Naval Shipyard, Kittery, Maine in approximately 1953.

5. During the period of time set forth in Paragraph 4, the plaintiff was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied and/or sold by the defendant corporations.

6. The asbestos and asbestos-containing products which the plaintiff was exposed to were mined, milled, manufactured, fabricated, supplied, and/or sold by the defendant corporations, acting through their duly authorized agents, servants, and employees, who were then and there acting in the course and scope of their employment and in furtherance of the business of the defendants.

7. At all times pertinent hereto, the defendant corporations were engaged in the business of mining, milling, manufacturing, fabricating, supplying, and/or selling asbestos and asbestos-containing products.

8. At all times pertinent hereto, the asbestos products were products mined, milled, manufactured, fabricated, supplied and/or sold by the defendant corporations and reached the plaintiff without any substantial change in the condition of the product or

products from the time that they were sold.

COUNT I

NEGLIGENCE

9. Plaintiff realleges the allegations of Paragraphs 1 through 8 of the Complaint, and by reference, makes them part of this Count.

10. It was the duty of the defendant corporations to use and exercise reasonable and due care in the manufacture, fabricating, testing, inspection, production, marketing, packaging and sale of their asbestos and asbestos-containing products.

11. It was also the duty of the defendant corporations to provide detailed and adequate instructions relative to the proper and safe handling and use of their asbestos and asbestos products, and to provide detailed and adequate warnings concerning any and all dangers, characteristics, and potentialities of their asbestos and asbestos-containing products.

12. It was the continuing duty of the defendant corporations to advise and warn purchasers, consumers, users, and prior purchasers, consumers, and users of all dangers, characteristics, potentialities and defects discovered subsequent to their initial marketing or sale of their asbestos and asbestos-containing products.

13. Yet, nevertheless, wholly disregarding the aforesaid duties, the defendant corporations breached

their duties by: (a) failing to warn the plaintiff of the dangers, characteristics, and potentialities of their asbestos-containing product or products when the defendant corporations knew or should have known that exposure to their asbestos-containing products would cause disease and injury; (b) failing to warn the plaintiff of the dangers to which he was exposed when they knew or should have known of the dangers; (c) failing to exercise reasonable care to warn the plaintiff of what would be safe, sufficient, and proper protective clothing, equipment, and appliances when working with or near or being exposed to their asbestos and asbestos-containing products; (d) failing to provide safe, sufficient and proper protective clothing, equipment and appliances with their asbestos-containing product or products; (e) failing to test their asbestos and asbestos products in order to ascertain the extent of dangers involved upon exposure thereto; (f) failing to conduct such research as should have been conducted in the exercise of reasonable care, in order to ascertain the dangers involved upon exposure to their asbestos and asbestos-containing products; (g) failing to remove the product or products from the market when the defendant corporations knew or should have known of the hazards of exposure to their asbestos and asbestos-containing products; (h) failing upon discovery of the dangers, hazards, and



potentialities of exposure to asbestos to adequately warn and apprise the plaintiff of the dangers, hazards, and potentialities discovered; (i) failing upon discovery of the dangers, hazards, and potentialities of exposure to asbestos to package said asbestos and asbestos-containing products so as to eliminate said dangers, hazards, and potentialities; and, (j) generally using unreasonable, careless, and negligent conduct in the manufacture, fabricating, supply, or sale of their asbestos and asbestos-containing products.

14. As a direct and proximate result of the unreasonable, careless, and negligent conduct of the defendant corporation, the plaintiff has developed malignant mesothelioma and other asbestos-related disease, as a result of which the plaintiff has incurred medical expenses, suffered a dramatic reduction in his life expectancy, incurred great mental and physical pain and suffering, and suffered an impairment in his enjoyment of life, which damages are continuing in nature.

15. The defendants knew, or with the reasonable exercise of care, should have known of the dangerous characteristics, properties, and potentialities of asbestos and asbestos-containing products.

WHEREFORE, plaintiff, Charles Clayton, demands compensatory damages, plus interest and costs.

COUNT II

BREACH OF EXPRESSED AND IMPLIED WARRANTIES

16. Plaintiff realleges the allegations of Paragraphs 1 through 15 of the Complaint, and by reference, makes them part of this Count.

17. The plaintiff was a person whom the defendants could reasonably have expected to use, consume, or be affected by the defendants' asbestos and asbestos-containing products within the meaning of Massachusetts General Laws c. 106, sec. 2-318, as the defendants knew or had reason to know that their asbestos-containing products would be used in the insulation or construction industry and that individuals such as the plaintiff would come in contact with such asbestos materials.

18. The defendants expressly and impliedly warranted that the asbestos and asbestos-containing products described above were merchantable, safe, and fit for their ordinary and the particular purposes and requirements of plaintiff.

19. The defendants had reason to know of the particular purposes for which their asbestos and asbestos-containing products would be used.

20. The plaintiff relied upon the defendants' skill or judgment in selecting suitable insulation or construction products for safe use.

21. The defendants breached these warranties, in



that the asbestos-containing products they sold were not merchantable, safe, suitable, or fit for their ordinary or particular purposes.

22. As a direct and proximate result of the defendants' breach of warranties, the plaintiff has developed malignant mesothelioma and other asbestos-related disease, as a result of which the plaintiff has incurred medical expenses, suffered a dramatic reduction in his life expectancy, incurred great mental and physical pain and suffering, and suffered an impairment in his enjoyment of life, which damages are continuing in nature.

WHEREFORE, plaintiff, Charles Clayton, demands compensatory damages, plus interest and costs.

COUNT III

CONSPIRACY OR CONCERT OF ACTION: METROPOLITAN ONLY

23. Plaintiff realleges the allegations of Paragraphs 1 through 22 of the Complaint, and by reference, makes them part of this Count.

24. In addition, during the time period set forth in Paragraph 4, the plaintiff was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied and/or sold by the Johns Manville Corporation (hereinafter "Manville") and/or Raymark Industries,

Inc. (hereinafter "Raymark").

25. The defendant, Metropolitan Life Insurance Company, (hereinafter "Metropolitan") together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engaged in a conspiracy or concert of action to inflict injury on the plaintiff, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the plaintiff in the course of or as a consequence of the conspiracy or concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action.

- a. In 1932, Metropolitan, through its agents, Dr. Anthony Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos

disease. Further collaboration between Manville and Metropolitan continued the cover-up.

- b. Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Dr. Anthony Lanza, Associate Director of Metropolitan, (insurer of Manville and Raymark) that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as "fatal" and through other selective editing that affirmatively misrepresented asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark and Metropolitan, as insurer. Furthermore, upon

information and belief, it is alleged that Metropolitan, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

- c. In 1936, the conspirators or some of them including Manville, Raymark, and other companies entered into an agreement with the Saranac Laboratories in New York. Under this agreement, these conspirators acquired the power to decide what information Saranac Laboratories could publish about asbestos disease and to control in what form such publications were to occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to suppress material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.
- d. By November 1948, or earlier, Manville, Metropolitan (acting through Dr. Lanza), Raymark, and others decided to exert their

influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.

- e. At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensity of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the plaintiff.
- f. As a direct result of influence exerted by the above-described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA

Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to university libraries, government officials, agencies and others.

- g. Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.

26. Plaintiff further alleges that Metropolitan, Manville, Raymark and/or their predecessors in interest knowingly agreed, contrived, combined, confederated and conspired among themselves to cause plaintiff injuries, diseases, and/or illnesses by exposing plaintiff to harmful and dangerous asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Metropolitan, Manville, and Raymark further knowingly



agreed, contrived, combined, confederated and conspired to deprive plaintiff of the opportunity of informed free choice as to whether to use said asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products or to expose themselves to said dangers. In this connection, plaintiff has sued the Metropolitan Life Insurance Company in its capacity as a conspirator and because it committed tortious act in concert with others pursuant to a common design. Metropolitan, Manville, and Raymark committed the above-described wrongs by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the use of and exposure to Manville's and/or Raymark's asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

27. In furtherance of said conspiracies, Metropolitan, Manville, and Raymark performed the following overt acts:

- a. for many decades, Metropolitan, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use



of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly;

b. despite the medical and scientific data, literature and test reports possessed by and available to Metropolitan, individually and in conspiracy with Manville and Raymark, fraudulently, willfully and maliciously:

(i) withheld, concealed and suppressed said medical and scientific data, literature, and test reports regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases from plaintiff who were using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products;

(ii) caused to be released, published and disseminated medical and scientific data, literature, and test reports containing information and statements regarding the risks of asbestosis,

cancer, mesothelioma and other illnesses and diseases, which Metropolitan, Manville, and Raymark knew were either incorrect, incomplete, outdated and misleading; and

(iii) distorted the results of medical examinations conducted upon workers such as plaintiff who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm to which workers such as plaintiff has suffered; and

(iv) failing to adequately warn the plaintiff of the dangers to which he was exposed when they knew of the dangers.

c. by the false and fraudulent representations, omissions, failures, and concealments set forth above, Metropolitan, Manville, and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the plaintiff to rely upon said false and fraudulent representations, omissions,

failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

Said misrepresentations were false, incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

28. Plaintiff reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Metropolitan, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

29. As a direct and proximate result of the conspiracy and concert of action between Metropolitan, Manville and Raymark, the plaintiff has been deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result contracted asbestos-related diseases and other conditions, and/or

aggravated pre-existing conditions, as a result of which the plaintiff has suffered a dramatic reduction of his life expectancy, incurred great mental and physical pain and suffering, sustained lost wages and lost earning capacity, incurred medical expenses, and their enjoyment of life has been greatly impaired, which damages are continuing in nature.

WHEREFORE, Plaintiff, Charles Clayton, demands compensatory damages, plus interest and costs.

COUNT IV

UNDERTAKING OF SPECIAL DUTY: METROPOLITAN ONLY

30. Plaintiff realleges the allegations of Paragraphs 1 through 29 of the Complaint, and by reference, makes them part of this Count.

31. Defendant Metropolitan, through its Policyholders Service Bureau, undertook duties owed by entities which manufactured, sold, supplied, or distributed asbestos-containing products, including Manville and Raymark to plaintiff by testing of asbestos workers and the conduct of scientific studies. These duties included, without limitation, as follows:

- a. to test fully and adequately for health risks concomitant to the normal and intended use of their products; and
- b. to instruct fully and adequately in the use of their products so as to eliminate or reduce the health hazards concomitant with

their normal or intended use.

In undertaking these duties, Metropolitan knew or should have known that it was providing testing services for the ultimate protection of third persons, including the plaintiff.

32. In both conducting said tests and publishing their alleged results, Metropolitan failed to exercise reasonable care to conduct or publish complete, adequate, and accurate tests of the health effects of asbestos. Metropolitan also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure. In so acting, Metropolitan breached their special responsibility by failing to exercise reasonable care to protect their undertaking, as described above.

33. The plaintiff unwittingly but justifiably relied upon the thoroughness of Metropolitan's tests and information dissemination, the results of which Metropolitan published in leading medical journals.

34. In failing to test fully and adequately for the adverse health effects from exposure asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in

collaborating with entities which manufactured, sold, supplied, or distributed asbestos-containing products, including Manville and Raymark materially to understate the hazards of asbestos exposure, all for pecuniary profit and gain, Metropolitan acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including the plaintiff.

35. As a direct and proximate result of Metropolitan's failures to conduct or accurately publish adequate test or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to the plaintiff from asbestos exposure was increased, and (ii) plaintiff contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the plaintiff has suffered a dramatic reduction of their life expectancy, incurred great mental and physical pain and suffering, sustained lost wages and lost earning capacity, incurred medical expenses, and their enjoyment of life has been greatly impaired, which damages are continuing in nature.

WHEREFORE, Plaintiff, Charles Clayton, demands compensatory damages, plus interest and costs.

COUNT V

MALICIOUS, WILLFUL, WANTON AND RECKLESS

CONDUCT OR GROSS NEGLIGENCE

36. Plaintiff realleges the allegations of



41. The defendants acted maliciously, willfully, wantonly, and recklessly, or with gross negligence, by continuing to market their asbestos products, with reckless disregard for the health and safety of Plaintiff's and other users and consumers, knowing the dangerous characteristics and propensities of said asbestos products, but still depriving those affected by the dangers from information about those dangers.

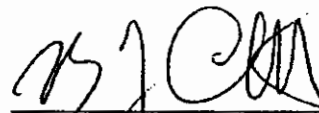
42. Because the defendants acted maliciously, willfully, wantonly, and recklessly, or with gross negligence, in marketing their hazardous asbestos and asbestos-containing products, in ignoring the medical and scientific data which was available to them, and depriving consumers, users, and the general public from that medical and scientific data, the plaintiff is entitled to compensatory damages.

WHEREFORE, the plaintiff, Charles Clayton, demands punitive damages in addition to the damages demanded in Counts I through IV, plus interest and costs.

Plaintiff demands a trial by jury on all issues.

DATED: March 18, 2005

Respectfully submitted,



Brad J. Mitchell  
(BBO #539845)  
THORNTON & NAUMES, LLP  
100 Summer Street, 30th floor  
Boston, MA 02110  
(617) 720-1333





**COMMONWEALTH OF MASSACHUSETTS**

**MIDDLESEX, ss.**

**SUPERIOR COURT  
CIVIL ACTION NO. 05-0925**

**CHARLES CLAYTON,  
Plaintiff,**

**v.**

**METROPOLITAN LIFE INSURANCE COMPANY, et al.  
Defendants.**

**ACKNOWLEDGMENT OF SERVICE AND NOTICE OF INTENT**

The defendant, Ingersoll-Rand Company, hereby acknowledges receipt of a summons and a copy of plaintiff's complaint in this action.

The defendant, Ingersoll-Rand Company, hereby asserts its standard set of affirmative defenses on file in the Massachusetts asbestos consolidated docket.

The defendant, Ingersoll-Rand Company, does not adopt the model cross-claim of defendants.

The defendant, Ingersoll-Rand Company, demands a trial by jury on all issues brought by or against it in this action.

The defendant, Ingersoll-Rand Company, hereby gives notice of its intent to assert a third-party claim against the Manville Corporation Asbestos Disease Compensation Fund pursuant to paragraph I.B. (1) of the order dated October 18, 1989, amendments to Pretrial Order No. 4

Respectfully submitted,  
For the defendant,  
Ingersoll-Rand Company,  
by its attorneys,

Richard B. Kirby, B.B.O. No.: 273600  
Keegan Werlin LLP  
265 Franklin Street  
Boston, MA 02110  
(617) 951-1400  
(617) 951-1354 (facsimile)

**CERTIFICATE OF SERVICE**

I, Richard B. Kirby, Attorney for the defendant, Ingersoll-Rand Company, in the above-entitled action, hereby certify that I served upon the attorneys of record a copy of the Acknowledgment of Service and Notice of Intent, by electronic filing, via LexisNexis File & Serve, on this, the 18<sup>th</sup> day of May, 2005.

47161-70772

Richard B. Kirby



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, S.S.

SUPERIOR COURT  
C.A. NO. 05-0925

CHARLES CLAYTON,

Plaintiff,

v.

RAPID-AMERICAN CORPORATION,  
ET AL.,

Defendants.

ACKNOWLEDGEMENT OF SERVICE OF  
RAPID-AMERICAN CORPORATION

The defendant, Rapid-American Corporation, hereby acknowledges receipt of a summons and a copy of the plaintiff's complaint in this action.

The defendant adopts the Model Cross-Claim of Defendants.

The defendant demands a trial by jury on all issues brought by or against it in this action.

RAPID-AMERICAN CORPORATION,

By its Attorney,

[original signature on file]

\_\_\_\_\_  
Barbara S. Hamelburg, BBO#218670  
Foley Hoag, LLP  
155 Seaport Boulevard  
Boston, MA 02110  
(617) 832-1000

Date: May 18, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2005, I served the foregoing electronically, via Lexis/Nexis File and Serve, to plaintiff counsel and to all defense counsel of record.

[original signature on file]

---

Barbara S. Hamelburg

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
DEPARTMENT OF THE  
TRIAL COURT

Charles Clayton,

Plaintiff,

Vs.

Metropolitan Life Insurance Co., et. al.,

Defendants

DOCKET NO.: 05-0925

ACKNOWLEDGMENT OF SERVICE

Pursuant to Pre-Trial Order No. 4, DaimlerChrysler Corporation, hereby acknowledges receipt of a summons and a copy of Plaintiff's Complaint in this action.

DaimlerChrysler Corporation hereby asserts its standard set of Affirmative Defenses on file in the Massachusetts asbestos consolidated docket.

DaimlerChrysler Corporation does not adopt the Model Cross-Claim of Defendants.

DaimlerChrysler Corporation demands a trial by jury on all issues brought by or against defendant in this action.

DaimlerChrysler Corporation hereby gives notice of its intent to assert a third-party claim against the Manville Corporation Asbestos Disease Compensation Fund pursuant to paragraph I.B. (1) of the Order dated October 18, 1989, amending Pretrial Order No. 4.

**DAIMLERCHRYSLER CORPORATION**

By Its Attorneys,

**CAMPBELL CAMPBELL EDWARDS &  
CONROY  
PROFESSIONAL CORPORATION**

/s/

Holly M Polglase, BBO #553271  
Charles K. Mone, BBO #351660  
One Constitution Plaza  
Boston, MA 02129

CERTIFICATE OF SERVICE

A true and correct copy of this document was electronically served on Verilaw which is charged with the responsibility of electronic service on all counsel of record.

/s/

Holly M. Polglase BBO# 553271  
Charles K. Mone, BBO# 351660

**COMMONWEALTH OF MASSACHUSETTS**

**MIDDLESEX, ss.**

**SUPERIOR COURT  
DEPARTMENT OF THE  
TRIAL COURT**

Charles Clayton,

Plaintiff,

Vs.

Metropolitan Life Insurance Co., et. al.,

Defendants

**DOCKET NO.: 05-0925**

**ACKNOWLEDGMENT OF SERVICE**

Pursuant to Pre-Trial Order No. 4, Ford Motor Company, hereby acknowledges receipt of a summons and a copy of Plaintiff's Complaint in this action.

Ford Motor Company hereby asserts its standard set of Affirmative Defenses on file in the Massachusetts asbestos consolidated docket.

Ford Motor Company does not adopt the Model Cross-Claim of Defendants.

Ford Motor Company demands a trial by jury on all issues brought by or against defendant in this action.

Ford Motor Company hereby gives notice of its intent to assert a third-party claim against the Manville Corporation Asbestos Disease Compensation Fund pursuant to paragraph I.B. (1) of the Order dated October 18, 1989, amending Pretrial Order No. 4.

**FORD MOTOR COMPANY**

By Its Attorneys,

**CAMPBELL CAMPBELL EDWARDS &  
CONROY  
PROFESSIONAL CORPORATION**

/s/

Holly M Polglase, BBO #553271

Charles K. Mone, BBO #351660

One Constitution Plaza

Boston, MA 02129

**CERTIFICATE OF SERVICE**

A true and correct copy of this document was electronically served on Verilaw which is charged with the responsibility of electronic service on all counsel of record.

/s/

Holly M. Polglase BBO# 553271

Charles K. Mone, BBO# 351660

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL DEPARTMENT

CHARLES CLAYTON

Plaintiff,

v.

GARLOCK SEALING TECHNOLOGIES

LLC, Successor by Merger to Garlock, Inc et al.,

Defendants.

CIVIL ACTION NO.: 05-0925

**ACKNOWLEDGEMENT**

Defendant, Garlock Sealing Technologies LLC, Successor by Merger to Garlock Inc, hereby acknowledges receipt of a summons and a copy of plaintiff's complaint in this action.

Defendant:

- (a) adopts the Model Cross-Claim of Defendants;
- (b) demands a trial by jury on all issues brought by or against defendant in this action.

Date: 5/12/05

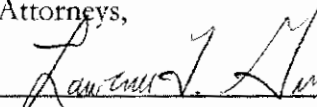
Respectfully submitted,

The Defendant,

GARLOCK SEALING TECHNOLOGIES

LLC, Successor by Merger to GARLOCK INC,

By Its Attorneys,

  
Craig R. Waksler, B.B.O. # 566087

Lawrence T. Gingrow, III, B.B.O. # 651475

TAYLOR, DUANE, BARTON

& GILMAN, LLP

160 Federal Street

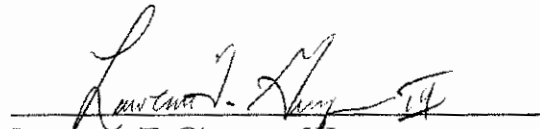
Boston, MA 02110

(617) 654-8200

(617) 482-5350 fax

**CERTIFICATE OF SERVICE**

I, Lawrence T. Gingrow, III, hereby certify that I served the foregoing Acknowledgement of Service, electronically to all parties of record, this date May 13, 2005 to Plaintiffs' Counsel, Defendants' Liaison Counsel, and Defendants' Counsel of Record as listed on the service list maintained by the Clerk of Court in regard to Massachusetts Asbestos Litigation.

  
\_\_\_\_\_  
Lawrence T. Gingrow, III





COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT  
C.A. No: 05-0925

CHARLES CLAYTON,  
Plaintiff

VS.

METROPOLITAN LIFE INSURANCE COMPANY, ET AL,  
Defendants

**ACKNOWLEDGEMENT OF SERVICE**

The Defendant, John Crane Inc. hereby acknowledges receipt of a summons and a copy of the Plaintiff's Complaint in this action.

The Defendant adopts its corresponding Model Answer and Affirmative Defenses on file and adopts the Model Cross-Claim of the Defendants.

The Defendant demands a trial by jury on all issues brought by or against the defendant in this action.

Defendant, John Crane Inc.,  
By Its Attorneys:

/s/ David H. Stillman  
David H. Stillman, Esquire, # 555554  
Stillman & Associates, P.C.  
51 Mill Street, Suite 5  
Hanover, MA 02339  
(781) 829-1077  
F: (781) 829-2077

**CERTIFICATE OF SERVICE**

I, David H. Stillman, attorney for Defendant John Crane Inc., hereby certify that on this date, May 13, 2005, I filed the within document with the Court, and further that I caused a copy of said document to be sent to all counsel of record electronically via LexisNexis File & Serve.

/s/ David H. Stillman  
David H. Stillman, Esq. #555554  
Stillman & Associates, P.C.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
DEPARTMENT OF THE  
TRIAL COURT

Charles Clayton, )  
 )  
Plaintiff, )  
Vs. )  
 )  
Metropolitan Life Insurance Co., et. al., )  
 )  
Defendants )

DOCKET NO.: 05-0925

**ACKNOWLEDGMENT OF SERVICE**

Pursuant to Pre-Trial Order No. 4, DaimlerChrysler Corporation, hereby acknowledges receipt of a summons and a copy of Plaintiff's Complaint in this action.

DaimlerChrysler Corporation hereby asserts its standard set of Affirmative Defenses on file in the Massachusetts asbestos consolidated docket.

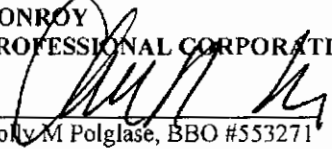
DaimlerChrysler Corporation does not adopt the Model Cross-Claim of Defendants.

DaimlerChrysler Corporation demands a trial by jury on all issues brought by or against defendant in this action.

DaimlerChrysler Corporation hereby gives notice of its intent to assert a third-party claim against the Manville Corporation Asbestos Disease Compensation Fund pursuant to paragraph I.B. (1) of the Order dated October 18, 1989, amending Pretrial Order No. 4.

DAIMLERCHRYSLER CORPORATION  
By Its Attorneys,

CAMPBELL CAMPBELL EDWARDS &  
CONROY  
PROFESSIONAL CORPORATION

  
Holly M. Polglase, BBO #553271  
Charles K. Mone, BBO #351660  
One Constitution Plaza  
Boston, MA 02129

**CERTIFICATE OF SERVICE**

A true and correct copy of this document was electronically served on Verilaw which is charged with the responsibility of electronic service on all counsel of record.

Original Signature on File with the Court  
Holly M. Polglase BBO# 553271  
Charles K. Mone, BBO# 351660



**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, ss.

SUPERIOR COURT  
DEPARTMENT OF THE  
TRIAL COURT  
CIVIL ACTION NO. 05-0925

CHARLES CLAYTON, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
METROPOLITAN LIFE INSURANCE )  
COMPANY, et al., )  
 )  
Defendants )

**ANSWER, AFFIRMATIVE DEFENSES AND  
CROSSCLAIM OF DEFENDANTS OWENS-ILLINOIS, INC.  
AND OWENS-ILLINOIS GLASS COMPANY  
TO PLAINTIFF'S COMPLAINT**

Defendants Owens-Illinois, Inc. and Owens-Illinois Glass Company (hereinafter referred to as "Defendant") hereby answers Plaintiff's Complaint as follows:

**PARTY PLAINTIFF**

1. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of Plaintiff's Complaint and therefore denies the same.

**PARTY DEFENDANTS**

2A. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2A of Plaintiff's Complaint and therefore denies the same.

2B. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2B of Plaintiff's Complaint and

therefore denies the same.

2C. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2C of Plaintiff's Complaint and therefore denies the same.

2D. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2D of Plaintiff's Complaint and therefore denies the same.

2E. Defendant admits that it has its principal place of business located in Ohio, but denies the remainder of the allegations in Paragraph 2E of Plaintiffs' Complaint.

2F. Defendant denies the allegations in Paragraph 2F of Plaintiff's Complaint.

2G. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2G of Plaintiff's Complaint and therefore denies the same.

2H. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2H of Plaintiff's Complaint and therefore denies the same.

2I. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2I of Plaintiff's Complaint and therefore denies the same.

2J. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2J of Plaintiff's Complaint and

therefore denies the same.

2K. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2K of Plaintiff's Complaint and therefore denies the same.

2L. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2L of Plaintiff's Complaint and therefore denies the same.

2M. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2M of Plaintiff's Complaint and therefore denies the same.

2N. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2N of Plaintiff's Complaint and therefore denies the same.

2O. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2O of Plaintiff's Complaint and therefore denies the same.

2P. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2P of Plaintiff's Complaint and therefore denies the same.

2Q. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2Q of Plaintiff's Complaint and

therefore denies the same.

2R. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2R of Plaintiff's Complaint and therefore denies the same.

2S. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2S of Plaintiff's Complaint and therefore denies the same.

2T. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2T of Plaintiff's Complaint and therefore denies the same.

2U. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2U of Plaintiff's Complaint and therefore denies the same.

2V. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2V of Plaintiff's Complaint and therefore denies the same.

3. Defendant denies each and every allegation contained in Paragraph 3 of Plaintiff Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 3 as it relates to the other defendants and therefore denies the same.

4. Defendant denies each and every allegation contained in Paragraph 4 of Plaintiff's



Complaint to the extent that they relate to the Defendants Owens-Illinois, Inc. and Owens-Illinois Glass Company, but admits the allegations contained in Paragraph 4 of Plaintiff's Complaint insofar as they relate to all other defendants.

5. Defendant denies each and every allegation contained in Paragraph 5 of Plaintiff's Complaint to the extent that they relate to the Defendants Owens-Illinois, Inc. and Owens-Illinois Glass Company, but admits the allegations contained in Paragraph 5 of Plaintiff's Complaint insofar as they relate to all other defendants.

6. Defendant denies each and every allegation contained in Paragraph 6 of Plaintiff's Complaint to the extent that they relate to the Defendants Owens-Illinois, Inc. and Owens-Illinois Glass Company, but admits the allegations contained in Paragraph 6 of Plaintiff's Complaint insofar as they relate to all other defendants.

7. Defendant denies each and every allegation contained in Paragraph 7 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 7 as it relates to the other defendants and therefore denies the same.

8. Defendant denies each and every allegation contained in Paragraph 8 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 8 as it relates to the other defendants and therefore denies the same.

WHEREFORE, Defendant requests that Plaintiff's Complaint be dismissed and Defendant awarded its costs.



**COUNT I**

**NEGLIGENCE**

9. Defendant repeats and realleges each and every one of its answers to the allegations contained in Paragraphs 1 through 8 of Plaintiff's Complaint as if set forth herein in full.

10. Defendant denies each and every allegation contained in Paragraph 10 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 10 as it relates to the other defendants and therefore denies the same.

11. Defendant denies each and every allegation contained in Paragraph 11 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 11 as it relates to the other defendants and therefore denies the same.

12. Defendant denies each and every allegation contained in Paragraph 12 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 12 as it relates to the other defendants and therefore denies the same.

13. Defendant denies each and every allegation contained in Paragraph 13 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 13 as it relates to the other defendants and therefore denies the same.

14. Defendant denies each and every allegation contained in Paragraph 14 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 14 as it relates to the other defendants and therefore denies the same.

15. Defendant denies each and every allegation contained in Paragraph 15 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 15 as it relates to the other defendants and therefore denies the same.

WHEREFORE, Defendant requests that Plaintiff's Complaint be dismissed and Defendant awarded its costs.

## **COUNT II**

### **BREACH OF EXPRESSED AND IMPLIED WARRANTIES**

16. Defendant repeats and realleges each and every one of its answers to the allegations contained in Count I of Plaintiff's Complaint as if set forth herein in full.

17. Defendant denies each and every allegation contained in Paragraph 17 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 17 as it relates to the other defendants and therefore denies the same.

18. Defendant denies each and every allegation contained in Paragraph 18 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 18 as it

relates to the other defendants and therefore denies the same.

19. Defendant denies each and every allegation contained in Paragraph 19 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 19 as it relates to the other defendants and therefore denies the same.

20. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 20 of Plaintiff's Complaint and therefore denies the same.

21. Defendant denies each and every allegation contained in Paragraph 21 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 21 as it relates to the other defendants and therefore denies the same.

22. Defendant denies each and every allegation contained in Paragraph 22 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 22 as it relates to the other defendants and therefore denies the same.

WHEREFORE, Defendant requests that Plaintiff's Complaint be dismissed and Defendant awarded its costs.

### **COUNT III**

#### **CONSPIRACY OR CONCERT OF ACTION: METROPOLITAN ONLY**

23. Defendant repeats and realleges each and every one of its answers to the

allegations contained in Counts I and II of Plaintiff's Complaint as if set forth herein in full.

24. Defendant denies each and every allegation contained in Paragraph 24 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 24 as it relates to the other defendants and therefore denies the same.

25(a-g). Defendant denies each and every allegation contained in Paragraph 25 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 25 as it relates to the other defendants and therefore denies the same.

26. Defendant denies each and every allegation contained in Paragraph 26 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 26 as it relates to the other defendants and therefore denies the same.

27(a-c). Defendant denies each and every allegation contained in Paragraph 27 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 27 as it relates to the other defendants and therefore denies the same.

28. Defendant denies each and every allegation contained in Paragraph 28 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 28 as it relates to the other defendants and therefore denies the same.

29. Defendant denies each and every allegation contained in Paragraph 29 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 29 as it relates to the other defendants and therefore denies the same.

WHEREFORE, Defendant requests that Plaintiff's Complaint be dismissed and Defendant awarded its costs.

#### **COUNT IV**

##### **UNDERTAKING OF SPECIAL DUTY: METROPOLITAN ONLY**

30. Defendant repeats and realleges each and every one of its answers to the allegations contained in Counts I through III of Plaintiff's Complaint as if set forth herein in full.

31(a-b). Defendant denies each and every allegation contained in Paragraph 31 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 31 as it relates to the other defendants and therefore denies the same.

32. Defendant denies each and every allegation contained in Paragraph 32 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 32 as it relates to the other defendants and therefore denies the same.

33. Defendant denies each and every allegation contained in Paragraph 33 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 33 as it

relates to the other defendants and therefore denies the same.

34. Defendant denies each and every allegation contained in Paragraph 34 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 34 as it relates to the other defendants and therefore denies the same.

35. Defendant denies each and every allegation contained in Paragraph 35 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 35 as it relates to the other defendants and therefore denies the same.

WHEREFORE, Defendant requests that Plaintiff's Complaint be dismissed and Defendant awarded its costs.

**COUNT V**

**MALICIOUS, WILLFUL, WANTON AND  
RECKLESS CONDUCT OR GROSS NEGLIGENCE**

36. Defendant repeats and realleges each and every one of its answers to the allegations contained in Counts I through IV of Plaintiff's Complaint as if set forth herein in full.

37. Defendant denies each and every allegation contained in Paragraph 37 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 37 as it relates to the other defendants and therefore denies the same.

38. Defendant denies each and every allegation contained in Paragraph 38 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or



knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 38 as it relates to the other defendants and therefore denies the same.

39. Defendant denies each and every allegation contained in Paragraph 39 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 39 as it relates to the other defendants and therefore denies the same.

40. Defendant denies each and every allegation contained in Paragraph 40 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 40 as it relates to the other defendants and therefore denies the same.

41. Defendant denies each and every allegation contained in Paragraph 41 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 41 as it relates to the other defendants and therefore denies the same.

42. Defendant denies each and every allegation contained in Paragraph 42 of Plaintiff's Complaint to the extent that it relates to the Defendant and is without information or knowledge sufficient to form a belief as to the truth of the allegations in said Paragraph 42 as it relates to the other defendants and therefore denies the same.

WHEREFORE, Defendant requests that Plaintiff's Complaint be dismissed and Defendant awarded its costs.



## **AFFIRMATIVE DEFENSES**

### **FIRST DEFENSE**

Plaintiff's Complaint fails to state a cause of action against Defendant upon which relief can be granted.

### **SECOND DEFENSE**

Plaintiff's claims are barred by the applicable statutes of limitations.

### **THIRD DEFENSE**

Defendant avers that the said injuries referred to in Plaintiff's Complaint were caused by the conduct of others for whom Defendant was not responsible, and not by the conduct of defendant.

### **FOURTH DEFENSE**

Plaintiff voluntarily assumed the risk of his injuries and, therefore, recovery is barred.

### **FIFTH DEFENSE**

Defendant has no knowledge or means of ascertaining the truth or falsity of the averments contained in the Complaint respecting the nature and extent of the injuries, damages, and losses claimed to have been sustained by the Plaintiff.

### **SIXTH DEFENSE**

Defendant avers that any claims for alleged breaches of warranty are barred by reason of the failure of the Plaintiff to give reasonable notice of the alleged breaches as required by the applicable provisions of the Uniform Commercial Code.

**SEVENTH DEFENSE**

Defendant avers that any claims for alleged breaches of warranty are barred by reason of lack of privity.

**EIGHTH DEFENSE**

If Plaintiff sustained injuries as alleged, then the same occurred as a result of the abuse and misuse of the products allegedly in question.

**NINTH DEFENSE**

Defendant expressly denies that it manufactured, designed, and/or sold any products referred to in Plaintiff's Complaint which caused injury to Plaintiff. Notwithstanding, the products of Defendant which Plaintiff allegedly used or was exposed to, if any, were not in the same condition as when sold, having been materially altered sometime after the sale and prior to the use or exposure as alleged.

**TENTH DEFENSE**

The claims of the Plaintiff are barred by the doctrine of laches in failing to notify the necessary parties of the claim or give due and timely notice of their claim against Defendant to the prejudice of Defendant.

**ELEVENTH DEFENSE**

Punitive damages are unconstitutional for the following reasons:

a) The subjecting of Defendant to multiple trials for the same course of conduct and the multiple impositions of punitive damages for the same course of conduct is a violation of both substantive and procedural due process under the United States Constitution and the

Constitution of the Commonwealth of Massachusetts;

b) The standard for the award of punitive damages is constitutionally void for vagueness;

c) There is no principle of limitation on the multiple imposition of punitive damage awards for the same course of conduct.

#### **TWELFTH DEFENSE**

Defendant avers that the state of the medical and scientific knowledge regarding its products and/or their contents, at all times material hereto, was such that Defendant never knew or could have known that its products presented any risk or harm to the Plaintiff if such products were properly used.

#### **THIRTEENTH DEFENSE**

Defendant avers that if Plaintiff applied for and received workers' compensation benefits, then this Complaint is barred by the provision of the Workers' Compensation Act.

#### **FOURTEENTH DEFENSE**

Defendant avers that there has been an insufficiency of process and an insufficiency of service of process.

#### **FIFTEENTH DEFENSE**

If it is proven at trial that products of Defendant were furnished as alleged to Plaintiff's employers and said products were used in the fashion alleged, which is specifically denied, then any product manufactured or processed by this defendant which was or may have been so furnished and which was so used, was furnished in strict conformity to the conditions specified

or to the specifications issued by or under the direction of the said employers.

**SIXTEENTH DEFENSE**

Defendant avers that if Plaintiff have settled with and/or released other defendants or entities who are tortfeasors in accordance with Massachusetts General Laws, Defendant Owens-Illinois, Inc. is entitled to a reduction of any judgment either in the total of all the settlement amounts or the pro-rata share of fault of said tortfeasors as determined by the Court or jury, whichever is greater.

**SEVENTEENTH DEFENSE**

This Court lacks subject matter jurisdiction over each and every Count contained in Plaintiff's Complaint.

**EIGHTEENTH DEFENSE**

This Court lacks personal jurisdiction over the Defendant with respect to each and every Count contained in Plaintiff's Complaint.

**NINETEENTH DEFENSE**

Plaintiff is not a person whom the Defendant could reasonably have expected to use, consume, or be affected by its products.

**TWENTIETH DEFENSE**

The injuries complained of by the Plaintiff are wholly or partially caused by independent means, including inter alia, the conduct and habits of Plaintiff and exposure to other particulates in the environment.

**TWENTY FIRST DEFENSE**

The Defendant had no duty to give instructions to Plaintiff or to warn Plaintiff of any hazards attendant to the contact with, use of, or exposure to its products containing asbestos, whether known or constructively known by Defendant, because those hazards were known by other persons who controlled or supervised Plaintiff in the course of or incidental to his employment.

**TWENTY SECOND DEFENSE**

There was no privity of contract between Defendant and Plaintiff.

**TWENTY THIRD DEFENSE**

An action for breach of warranty was not available to Plaintiff during the period of the allegedly injurious exposure to, use of, or contact with products allegedly manufactured by Defendant.

**TWENTY FOURTH DEFENSE**

The Plaintiff's claims are barred for failure of the Plaintiff to give notice to Defendant of any alleged breach.

**TWENTY FIFTH DEFENSE**

No warranty of any kind was extended to Plaintiff in this matter.

**TWENTY SIXTH DEFENSE**

Defendant never made any affirmation of fact, representation or conducted itself in any manner so as to constitute an express or implied warranty.

**TWENTY SEVENTH DEFENSE**

Applicable Massachusetts law provides no basis for the assertion of express warranty in favor of Plaintiff at the time when any sale or transfer of Defendant's products containing asbestos is alleged to have taken place.

**TWENTY EIGHTH DEFENSE**

The utility of the products manufactured by Defendant outweighs the danger allegedly involved and, therefore, Plaintiff's claim is barred as a matter of public policy.

**TWENTY NINTH DEFENSE**

No representation, affirmation of fact, or other conduct regarding the alleged sale of products containing asbestos was made or offered with the intent of the parties to such sale or transfer that such conduct constitutes a "basis of the bargain."

**THIRTIETH DEFENSE**

The Plaintiff failed to state a claim in express or implied warranty of merchantability or fitness for a particular purpose because no particular purpose is alleged as between the buyer and sellers so as to permit a cause of action by these Plaintiff.

**THIRTY FIRST DEFENSE**

Defendant Owens-Illinois, Inc. ceased to manufacture, sell and distribute asbestos-containing insulation products in 1958. It has not since engaged in any such business. As between Plaintiff and Defendant Owens-Illinois, the law applicable to this action is the law that existed in 1958 and before. It is unlawful, inequitable and in violation of Defendant Owens-Illinois' contractual, statutory and constitutional rights to apply statutes and principles of law

other than, or in a manner different from, that which existed for the period in which Defendant Owens-Illinois sold its asbestos-containing insulation products.

**THIRTY SECOND DEFENSE**

The negligence of the Plaintiff's employer was a concurrent, proximate cause of the damages allegedly suffered by the Plaintiff, and the Defendant is entitled to have any judgment against it in favor of the Plaintiff reduced by the amount of any present or future compensation which the Plaintiff have or will receive under any state or federal workers' compensation statute or longshoremen's and harbor workers' lien.

**THIRTY THIRD DEFENSE**

If Plaintiff establish any exposure to Defendant's products, said exposure would have been so minimal as to be insufficient to establish to a reasonable degree of probability that its products caused Plaintiff's claimed injuries.

**THIRTY FOURTH DEFENSE**

If Plaintiff was exposed to any of Defendant's asbestos products, then the Defendant is not liable to the Plaintiff as a matter of law because of the government contract and/or government specification defenses.

**THIRTY FIFTH DEFENSE**

The venue selected by the Plaintiff is improper.

**THIRTY SIXTH DEFENSE**

The forum selected by Plaintiff is not convenient.



**THIRTY SEVENTH DEFENSE**

Defendant hereby adopts and incorporates herein all of the Standard Affirmative Defenses, the Supplemental Standard Set of Affirmative Defenses and the Second Supplemental Standard Set of Affirmative Defenses filed IN RE: Massachusetts Asbestos Cases and dated December 10, 1985, January 6, 1996 and May 27, 1999, respectively.

WHEREFORE, Defendants request that Plaintiff's Complaint be dismissed and Defendant awarded its costs.

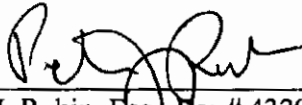
**CROSSCLAIM AGAINST ALL DEFENDANTS**

Defendants Owens-Illinois, Inc. and Owens-Illinois Glass Company hereby complain against all present and future co-defendants, by adopting and incorporating herein each and every allegation set forth in the model Crossclaim referenced in Pretrial Order No. 4, section V(F), dated March 11, 1985.

Wherefore, the Defendants Owens-Illinois Inc. and Owens-Illinois Glass Company respectfully pray that each of the Crossclaims be sustained and that any judgment against them be reduced or vacated in accordance with the cross claims filed herein.

The Defendant demands a trial by jury.

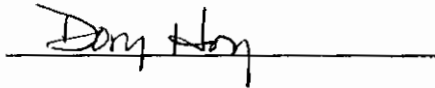
Dated at Portland, Maine this 9 day of <sup>May</sup> March, 2005.



Peter J. Rubin, Esq., Bar # 432980  
Todd S. Holbrook, Esq., Bar # 563828  
Attorney for Defendants Owens-Illinois, Inc. and  
Owens-Illinois Glass Company  
BERNSTEIN, SHUR, SAWYER & NELSON  
100 Middle Street, P.O. Box 9729  
Portland, Maine 04101-5029  
(207) 774-1200

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was copied to counsel of record via electronic service this 9 day of May, 2005.





COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
C.A. No. 05-0925

CHARLES CLAYTON,

Plaintiff,

v.

ECKEL INDUSTRIES, INC., et al.

Defendants.

**ACKNOWLEDGMENT OF SERVICE**

Pursuant to Pre-Trial Order No. 4, Section V.D. dated March 11, 1985, the Defendant, Eckel Industries, Inc., hereby acknowledges receipt of a summons and a copy of Plaintiff's complaint in this action.

Pursuant to the Pretrial Order No. 4, Section V.D., the filing of this Acknowledgment of Service by Eckel Industries, Inc. does not constitute a waiver of Eckel Industries, Inc.'s right to challenge any defect in process or service of process. Eckel Industries, Inc. shall be deemed to have fulfilled the requirement of Massachusetts Rules of Civil Procedure, Rule 12 by filing this Acknowledgment of Service.

The Defendant, Eckel Industries, Inc., does not adopt the model cross-claim of Defendants. Instead Eckel Industries, Inc. adopts its own affirmative defenses and cross-claim filed on the Massachusetts Asbestos Litigation consolidated docket.

The Defendant, Eckel Industries, Inc., demands a trial by jury on all issues brought by or against it in this action.

Respectfully submitted,

The Defendant,  
ECKEL INDUSTRIES, INC.,  
By its attorneys,

/SIGNATURE ON FILE/

David M. Governo B.B.O. No. 205590  
Jeniffer A. P. Carson B.B.O. No.: 643862  
Governo Law Firm LLC  
260 Franklin Street 15th Floor  
Boston, MA 02110  
(617) 737-9045

**CERTIFICATE OF SERVICE**

I, Jeniffer A. P. Carson, attorney for the Defendant, Eckel Industries, Inc., in the above-entitled action, hereby certify that I served upon Plaintiff's attorney and all defense counsel of record a notice of the above Acknowledgement of Service via electronic filing on this 4th day of May, 2005.

/SIGNATURE ON FILE/

Jeniffer A. P. Carson

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Charles Clayton,

Plaintiff,

vs.

Metropolitan Life Insurance Co., et. al.,

Defendants


CIVIL ACTION NO.

**CORPORATE DISCLOSURE STATEMENT OF**  
**DAIMLERCHRYSLER CORPORATION**

DaimlerChrysler has no parent corporation and no publicly owned company owns 10% or more of DaimlerChrysler stock.

DaimlerChrysler Corporation is an indirect wholly owned subsidiary of DaimlerChrysler A.G.

Dated May 23, 2003

  
\_\_\_\_\_  
Attorney for DaimlerChrysler  
Corporation

**CERTIFICATE OF SERVICE**

I, Charles K. Mone, Counsel for the Defendant, do hereby certify that on May \_\_\_, 2005, a true copy of the above document was served on the plaintiff via Federal Express and email and on all defendants via email.

  
\_\_\_\_\_  
Charles K. Mone

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

<b>Charles Clayton,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CIVIL ACTION NO.</b>
	)	
<b>vs.</b>	)	
	)	
<b>Metropolitan Life Insurance Co., et. al.,</b>	)	
	)	
<b>Defendants</b>	)	

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441 et seq., the Defendant DaimlerChrysler Corporation ("Chrysler") hereby removes from the Superior Court of Middlesex County, Massachusetts to the United States District Court for the District of Massachusetts, the state court action entitled *Charles Clayton v. Metropolitan Life Insurance Co., et al.*, Civil Action No. 05-0925 ("*Clayton* action"). As grounds for removal, Chrysler states the following:

1. Plaintiff originally commenced this civil action on April 28, 2005, alleging bodily injury resulting from exposure to asbestos and asbestos-containing materials. A copy of the Plaintiff's Complaint is attached hereto as composite Exhibit A pursuant to the provisions of 28 U.S.C. § 1446 (a).

2. In Plaintiff's Complaint, Plaintiff Charles Clayton identified having exposure to asbestos-containing products at Federal Enclaves. Accordingly, this action falls within the Courts' original federal question jurisdiction pursuant to 28 U.S.C. § 1331.

3. Specifically, the Complaint provides that Plaintiff Charles Clayton was

exposed to asbestos-containing products while working as a food service worker aboard various ships at the Portsmouth Naval Shipyard, Kittery, Maine, in approximately 1953. *See* Exhibit A.

4. Pursuant to 28 U.S.C. § 1331, this Court has subject matter jurisdiction over the claims of Plaintiff in the *Clayton* action, because such action asserts claims arising under the "Federal Enclave" Clause of the U.S. Constitution, Art. I, Sec. 8, cl. 17, thereby giving rise to federal question jurisdiction. Accordingly, removal is appropriate pursuant to 28 U.S.C. § 1441(a)(b) and (c). *See Akin v. Ashland Chemical Co.*, 156 F.3d 1030, 1034 n. 1 (10th Cir. 1998); *Akin v. Big Three Industries, Inc.*, 851 F. Supp. 819, 822 (E.D. Tex. 1994); *Reed v. Fina Oil & Chem. Co.*, 995 F. Supp. 705, 713 (E.D. Tex. 1998); and *Hines v. Acand S, Inc.*, 128 F. Supp.2d 1003 (N.D. Tex. 2001).

5. Removal of this action is timely under the provisions of 28 U.S.C. § 1446(b), as this Notice of Removal was filed within thirty (30) days of receipt of information from which it first could be ascertained that the case was removable. *See Hines v. Acands, Inc.*, 128 F. Supp.2d 1003 (N.D. Tex. 2001).

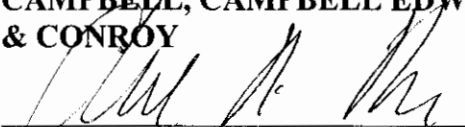
6. The remaining claims in this action are so related to the federal claims that they form part of the same transaction or controversy. Accordingly, this Court has supplemental jurisdiction over such claims pursuant to 28 U.S.C. § 1367(a).



7. Pursuant to 28 U.S.C. § 1446(d), all adverse parties are being provided with written notice of removal, and a copy of this Notice of Removal is being filed with the Clerk of the Superior Court, Middlesex County, Massachusetts.

This the 23 day of May 2005.

**DAIMLERCHRYSLER CORPORATION**  
**By Its Attorneys,**  
**CAMPBELL, CAMPBELL EDWARDS**  
**& CONROY**

  
\_\_\_\_\_  
**Charles K. Mone, BBO#: 351660**  
One Constitution Plaza  
Boston, MA 02129  
(617) 241-3000

**CERTIFICATE OF SERVICE**

I, Charles K. Mone, Counsel for the Defendant, do hereby certify that on May 23 2005, a true copy of the above document was served on the plaintiff via Federal Express and email and on all defendants via email.

  
\_\_\_\_\_  
Charles K. Mone

# EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX: ss.

SUPERIOR COURT  
DEPARTMENT OF THE  
TRIAL COURT

-----X  
CHARLES CLAYTON,

Plaintiff,

Civil Action  
No. 05-0925

v.

COMPLAINT

METROPOLITAN LIFE INSURANCE COMPANY  
EASTERN REFRACTORIES COMPANY, INC.  
ECKEL INDUSTRIES, INC.  
P.T. BRAKELINING COMPANY, INC.  
OWENS-ILLINOIS, INC.  
OWENS-ILLINOIS GLASS COMPANY  
RAPID-AMERICAN CORPORATION  
GARLOCK, INC.  
INGERSOLL-RAND COMPANY  
JOHN CRANE, INC.  
UNIROYAL, INC.  
BAYER CROPSCIENCE, INC. f/k/a  
AMCHEM PRODUCTS, INC.  
PARKER-HANNIFIN CORPORATION  
ITT INDUSTRIES, INC., AS  
SUCCESSOR TO GOULDS PUMPS, INC.  
UNION CARBIDE CORPORATION  
HONEYWELL INTERNATIONAL INC. f/k/a ALLIEDSIGNAL,  
INC. f/k/a THE BENDIX CORPORATION  
BORG-WARNER CORPORATION n/k/a BURNS  
INTERNATIONAL SERVICES CORPORATION  
DAIMLERCHRYSLER CORPORATION  
FORD MOTOR COMPANY  
GENERAL MOTORS CORPORATION  
PNEUMO-ABEX CORPORATION  
HAMPDEN AUTOMOTIVE SALES CORP.,

PLAINTIFF DEMANDS  
A TRIAL BY JURY

Defendants.  
-----X

Now comes the plaintiff, by his attorneys, and  
files the following complaint:

1. PARTY PLAINTIFF

Plaintiff, Charles Clayton, a single person,  
resides at 3 Hillcrest Road, Apt. #2, Foxboro,

Massachusetts 02035.

2. PARTY DEFENDANTS

2A. The defendant, Metropolitan Life Insurance Company (hereinafter "Metropolitan"), is a foreign corporation which does or has done business in the Commonwealth of Massachusetts.

2B. The defendant, Eastern Refractories Company, Inc., is a corporation organized under the laws of the Commonwealth of Massachusetts with its principal place of business located in the Commonwealth of Massachusetts.

2C. The defendant, Eckel Industries, Inc., is a corporation organized under the laws of the Commonwealth of Massachusetts with a principal place of business located in the Commonwealth of Massachusetts.

2D. The defendant, P.T. Brakelining Company, Inc., is a Massachusetts corporation with a principal place of business in the Commonwealth of Massachusetts and has conducted business in the Commonwealth of Massachusetts.

2E. The defendant, Owens-Illinois, Inc., is a corporation incorporated under the laws of the State of Ohio, having a principal place of business outside the Commonwealth of Massachusetts, and has conducted business in the Commonwealth of Massachusetts.

2F. The defendant, Owens-Illinois Glass Company, is a corporation incorporated under the laws of the

State of Ohio, having a principal place of business outside the Commonwealth of Massachusetts and has conducted business in the Commonwealth of Massachusetts.

2G. The defendant, Rapid-American Corporation, is the legal successor to the Philip Carey Manufacturing Company and is a corporation incorporated under the laws of the State of Delaware, having a principal place of business outside the Commonwealth of Massachusetts, and on information and belief has conducted business in the Commonwealth of Massachusetts itself and through its predecessor corporation.

2H. The defendant, Garlock, Inc., is a foreign corporation having a principal place of business in the State of New York and has conducted business in the Commonwealth of Massachusetts.

2I. The defendant, Ingersoll-Rand Company, is a New Jersey corporation having a principal place of business in New Jersey and is registered to and has conducted business in the Commonwealth of Massachusetts.

2J. The defendant, John Crane, Inc., is a Delaware corporation with a principal place of business in the State of Illinois and has conducted business in the Commonwealth of Massachusetts.

2K. The defendant, Uniroval, Inc., is a foreign corporation with a principal place of business outside

the Commonwealth of Massachusetts and has conducted business in the Commonwealth of Massachusetts.

2L. The defendant, Bayer CropScience, Inc. f/k/a Amchem Products, Inc., is a Delaware corporation having a principal place of business in Pennsylvania which has conducted business in the Commonwealth of Massachusetts.

2M. The defendant, Parker-Hannifin Corporation, is a corporation incorporated under the laws of the State of Ohio having a principal place of business in the State of Ohio and has conducted business in the Commonwealth of Massachusetts.

2N. The defendant, ITT Industries, Inc., as Successor to Goulds Pumps, Inc., is a foreign corporation incorporated under the laws of the State of Indiana having a principal place of business in White Plains, New York, and has conducted business in the Commonwealth of Massachusetts.

2O. The defendant, Union Carbide Corporation, is a Connecticut corporation with a principal place of business outside the Commonwealth of Massachusetts and has conducted business in the Commonwealth of Massachusetts.

2P. The defendant, Honeywell International Inc. f/k/a AlliedSignal, Inc., f/k/a The Bendix Corporation, is a Delaware corporation having a principal place of business outside the Commonwealth of Massachusetts and

has conducted business in the Commonwealth of Massachusetts.

2Q. The defendant, Borg-Warner Corporation n/k/a Burns International Services Corporation, is a Delaware corporation with a principal place of business in the State of Illinois and has conducted business in the Commonwealth of Massachusetts.

2R. The defendant, DaimlerChrysler Corporation, is a Delaware corporation with a principal place of business in the State of Michigan which has conducted business in the Commonwealth of Massachusetts.

2S. The defendant, Ford Motor Company, is a Delaware corporation with a principal place of business in the State of Michigan and has conducted business in the Commonwealth of Massachusetts.

2T. The defendant, General Motors Corporation, is a Delaware corporation with a principal place of business in the State of Michigan and has conducted business in the Commonwealth of Massachusetts.

2U. The defendant, Pneumo-Abex Corporation, as Successor in Interest to Abex Corporation, is a foreign corporation, with a principal place of business outside the Commonwealth of Massachusetts which has conducted business in the Commonwealth of Massachusetts.

2V. The defendant, Hampden Automotive Sales Corp., is a corporation incorporated under the laws of the Commonwealth of Massachusetts, having a principal



place of business at 117 Heath Street, Boston, Massachusetts.

As used in this Complaint, the term "defendant" shall include any party defendants identified in paragraphs 2A-2V hereof, and their predecessors, which shall include, but is not limited to, any person, corporation, company or business entity: which formed part of any combination, consolidation, merger or reorganization from which any party defendant was created or was the surviving corporation; whose assets, stock, property, products or product line was acquired by any party defendant; whose patent rights, trademark rights, trade secrets or goodwill was acquired by any party defendant; or, which was dominated or controlled by any party defendant to such an extent that said party defendant was the "alter ego" of said corporation.

3. The plaintiff's cause of action arises from the defendants: (a) transacting business in Massachusetts; (b) contracting to supply and/or sell goods in Massachusetts; (c) doing or causing a tortious act to be done within Massachusetts; and/or, (d) causing the consequence of a tortious act to occur within Massachusetts.

4. Plaintiff, Charles Clayton, was exposed to defendants' asbestos and asbestos-containing materials while working as a mechanic from approximately 1938 to

1948; and as a food service worker aboard various ships at the Portsmouth Naval Shipyard, Kittery, Maine in approximately 1953.

5. During the period of time set forth in Paragraph 4, the plaintiff was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied and/or sold by the defendant corporations.

6. The asbestos and asbestos-containing products which the plaintiff was exposed to were mined, milled, manufactured, fabricated, supplied, and/or sold by the defendant corporations, acting through their duly authorized agents, servants, and employees, who were then and there acting in the course and scope of their employment and in furtherance of the business of the defendants.

7. At all times pertinent hereto, the defendant corporations were engaged in the business of mining, milling, manufacturing, fabricating, supplying, and/or selling asbestos and asbestos-containing products.

8. At all times pertinent hereto, the asbestos products were products mined, milled, manufactured, fabricated, supplied and/or sold by the defendant corporations and reached the plaintiff without any substantial change in the condition of the product or

products from the time that they were sold.

COUNT I

NEGLIGENCE

9. Plaintiff realleges the allegations of Paragraphs 1 through 8 of the Complaint, and by reference, makes them part of this Count.

10. It was the duty of the defendant corporations to use and exercise reasonable and due care in the manufacture, fabricating, testing, inspection, production, marketing, packaging and sale of their asbestos and asbestos-containing products.

11. It was also the duty of the defendant corporations to provide detailed and adequate instructions relative to the proper and safe handling and use of their asbestos and asbestos products, and to provide detailed and adequate warnings concerning any and all dangers, characteristics, and potentialities of their asbestos and asbestos-containing products.

12. It was the continuing duty of the defendant corporations to advise and warn purchasers, consumers, users, and prior purchasers, consumers, and users of all dangers, characteristics, potentialities and defects discovered subsequent to their initial marketing or sale of their asbestos and asbestos-containing products.

13. Yet, nevertheless, wholly disregarding the aforesaid duties, the defendant corporations breached

their duties by: (a) failing to warn the plaintiff of the dangers, characteristics, and potentialities of their asbestos-containing product or products when the defendant corporations knew or should have known that exposure to their asbestos-containing products would cause disease and injury; (b) failing to warn the plaintiff of the dangers to which he was exposed when they knew or should have known of the dangers; (c) failing to exercise reasonable care to warn the plaintiff of what would be safe, sufficient, and proper protective clothing, equipment, and appliances when working with or near or being exposed to their asbestos and asbestos-containing products; (d) failing to provide safe, sufficient and proper protective clothing, equipment and appliances with their asbestos-containing product or products; (e) failing to test their asbestos and asbestos products in order to ascertain the extent of dangers involved upon exposure thereto; (f) failing to conduct such research as should have been conducted in the exercise of reasonable care, in order to ascertain the dangers involved upon exposure to their asbestos and asbestos-containing products; (g) failing to remove the product or products from the market when the defendant corporations knew or should have known of the hazards of exposure to their asbestos and asbestos-containing products; (h) failing upon discovery of the dangers, hazards, and

potentialities of exposure to asbestos to adequately warn and apprise the plaintiff of the dangers, hazards, and potentialities discovered; (i) failing upon discovery of the dangers, hazards, and potentialities of exposure to asbestos to package said asbestos and asbestos-containing products so as to eliminate said dangers, hazards, and potentialities; and, (j) generally using unreasonable, careless, and negligent conduct in the manufacture, fabricating, supply, or sale of their asbestos and asbestos-containing products.

14. As a direct and proximate result of the unreasonable, careless, and negligent conduct of the defendant corporation, the plaintiff has developed malignant mesothelioma and other asbestos-related disease, as a result of which the plaintiff has incurred medical expenses, suffered a dramatic reduction in his life expectancy, incurred great mental and physical pain and suffering, and suffered an impairment in his enjoyment of life, which damages are continuing in nature.

15. The defendants knew, or with the reasonable exercise of care, should have known of the dangerous characteristics, properties, and potentialities of asbestos and asbestos-containing products.

WHEREFORE, plaintiff, Charles Clayton, demands compensatory damages, plus interest and costs.



COUNT II

BREACH OF EXPRESSED AND IMPLIED WARRANTIES

16. Plaintiff realleges the allegations of Paragraphs 1 through 15 of the Complaint, and by reference, makes them part of this Count.

17. The plaintiff was a person whom the defendants could reasonably have expected to use, consume, or be affected by the defendants' asbestos and asbestos-containing products within the meaning of Massachusetts General Laws c. 106, sec. 2-318, as the defendants knew or had reason to know that their asbestos-containing products would be used in the insulation or construction industry and that individuals such as the plaintiff would come in contact with such asbestos materials.

18. The defendants expressly and impliedly warranted that the asbestos and asbestos-containing products described above were merchantable, safe, and fit for their ordinary and the particular purposes and requirements of plaintiff.

19. The defendants had reason to know of the particular purposes for which their asbestos and asbestos-containing products would be used.

20. The plaintiff relied upon the defendants' skill or judgment in selecting suitable insulation or construction products for safe use.

21. The defendants breached these warranties, in

that the asbestos-containing products they sold were not merchantable, safe, suitable, or fit for their ordinary or particular purposes.

22. As a direct and proximate result of the defendants' breach of warranties, the plaintiff has developed malignant mesothelioma and other asbestos-related disease, as a result of which the plaintiff has incurred medical expenses, suffered a dramatic reduction in his life expectancy, incurred great mental and physical pain and suffering, and suffered an impairment in his enjoyment of life, which damages are continuing in nature.

WHEREFORE, plaintiff, Charles Clayton, demands compensatory damages, plus interest and costs.

COUNT III

CONSPIRACY OR CONCERT OF ACTION: METROPOLITAN ONLY

23. Plaintiff realleges the allegations of Paragraphs 1 through 22 of the Complaint, and by reference, makes them part of this Count.

24. In addition, during the time period set forth in Paragraph 4, the plaintiff was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied and/or sold by the Johns Manville Corporation (hereinafter "Manville") and/or Raymark Industries,



Inc. (hereinafter "Raymark").

25. The defendant, Metropolitan Life Insurance Company, (hereinafter "Metropolitan") together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engaged in a conspiracy or concert of action to inflict injury on the plaintiff, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the plaintiff in the course of or as a consequence of the conspiracy or concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action.

- a. In 1932, Metropolitan, through its agents, Dr. Anthony Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos

disease. Further collaboration between Manville and Metropolitan continued the cover-up.

- b. Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Dr. Anthony Lanza, Associate Director of Metropolitan, (insurer of Manville and Raymark) that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as "fatal" and through other selective editing that affirmatively misrepresented asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark and Metropolitan, as insurer. Furthermore, upon

information and belief, it is alleged that Metropolitan, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

- c. In 1936, the conspirators or some of them including Manville, Raymark, and other companies entered into an agreement with the Saranac Laboratories in New York. Under this agreement, these conspirators acquired the power to decide what information Saranac Laboratories could publish about asbestos disease and to control in what form such publications were to occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to suppress material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.
- d. By November 1948, or earlier, Manville, Metropolitan (acting through Dr. Lanza), Raymark, and others decided to exert their

influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.

- e. At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensity of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the plaintiff.
- f. As a direct result of influence exerted by the above-described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA

Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to university libraries, government officials, agencies and others.

- g. Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.

26. Plaintiff further alleges that Metropolitan, Manville, Raymark and/or their predecessors in interest knowingly agreed, contrived, combined, confederated and conspired among themselves to cause plaintiff injuries, diseases, and/or illnesses by exposing plaintiff to harmful and dangerous asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Metropolitan, Manville, and Raymark further knowingly

agreed, contrived, combined, confederated and conspired to deprive plaintiff of the opportunity of informed free choice as to whether to use said asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products or to expose themselves to said dangers. In this connection, plaintiff has sued the Metropolitan Life Insurance Company in its capacity as a conspirator and because it committed tortious act in concert with others pursuant to a common design. Metropolitan, Manville, and Raymark committed the above-described wrongs by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the use of and exposure to Manville's and/or Raymark's asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

27. In furtherance of said conspiracies, Metropolitan, Manville, and Raymark performed the following overt acts:

- a. for many decades, Metropolitan, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use



of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly;

b. despite the medical and scientific data, literature and test reports possessed by and available to Metropolitan, individually and in conspiracy with Manville and Raymark, fraudulently, willfully and maliciously:

(i) withheld, concealed and suppressed said medical and scientific data, literature, and test reports regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases from plaintiff who were using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products;

(ii) caused to be released, published and disseminated medical and scientific data, literature, and test reports containing information and statements regarding the risks of asbestosis,



cancer, mesothelioma and other illnesses and diseases, which Metropolitan, Manville, and Raymark knew were either incorrect, incomplete, outdated and misleading; and

(iii) distorted the results of medical examinations conducted upon workers such as plaintiff who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm to which workers such as plaintiff has suffered; and

(iv) failing to adequately warn the plaintiff of the dangers to which he was exposed when they knew of the dangers.

c. by the false and fraudulent representations, omissions, failures, and concealments set forth above, Metropolitan, Manville, and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the plaintiff to rely upon said false and fraudulent representations, omissions,

failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

Said misrepresentations were false, incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

28. Plaintiff reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Metropolitan, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

29. As a direct and proximate result of the conspiracy and concert of action between Metropolitan, Manville and Raymark, the plaintiff has been deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result contracted asbestos-related diseases and other conditions, and/or

aggravated pre-existing conditions, as a result of which the plaintiff has suffered a dramatic reduction of his life expectancy, incurred great mental and physical pain and suffering, sustained lost wages and lost earning capacity, incurred medical expenses, and their enjoyment of life has been greatly impaired, which damages are continuing in nature.

WHEREFORE, Plaintiff, Charles Clayton, demands compensatory damages, plus interest and costs.

COUNT IV

UNDERTAKING OF SPECIAL DUTY: METROPOLITAN ONLY

30. Plaintiff realleges the allegations of Paragraphs 1 through 29 of the Complaint, and by reference, makes them part of this Count.

31. Defendant Metropolitan, through its Policyholders Service Bureau, undertook duties owed by entities which manufactured, sold, supplied, or distributed asbestos-containing products, including Manville and Raymark to plaintiff by testing of asbestos workers and the conduct of scientific studies. These duties included, without limitation, as follows:

- a. to test fully and adequately for health risks concomitant to the normal and intended use of their products; and
- b. to instruct fully and adequately in the use of their products so as to eliminate or reduce the health hazards concomitant with

their normal or intended use.

In undertaking these duties, Metropolitan knew or should have known that it was providing testing services for the ultimate protection of third persons, including the plaintiff.

32. In both conducting said tests and publishing their alleged results, Metropolitan failed to exercise reasonable care to conduct or publish complete, adequate, and accurate tests of the health effects of asbestos. Metropolitan also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure. In so acting, Metropolitan breached their special responsibility by failing to exercise reasonable care to protect their undertaking, as described above.

33. The plaintiff unwittingly but justifiably relied upon the thoroughness of Metropolitan's tests and information dissemination, the results of which Metropolitan published in leading medical journals.

34. In failing to test fully and adequately for the adverse health effects from exposure asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in

collaborating with entities which manufactured, sold, supplied, or distributed asbestos-containing products, including Manville and Raymark materially to understate the hazards of asbestos exposure, all for pecuniary profit and gain, Metropolitan acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including the plaintiff.

35. As a direct and proximate result of Metropolitan's failures to conduct or accurately publish adequate test or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to the plaintiff from asbestos exposure was increased, and (ii) plaintiff contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the plaintiff has suffered a dramatic reduction of their life expectancy, incurred great mental and physical pain and suffering, sustained lost wages and lost earning capacity, incurred medical expenses, and their enjoyment of life has been greatly impaired, which damages are continuing in nature.

WHEREFORE, Plaintiff, Charles Clayton, demands compensatory damages, plus interest and costs.

COUNT V

MALICIOUS, WILLFUL, WANTON AND RECKLESS

CONDUCT OR GROSS NEGLIGENCE

36. Plaintiff realleges the allegations of

41. The defendants acted maliciously, willfully, wantonly, and recklessly, or with gross negligence, by continuing to market their asbestos products, with reckless disregard for the health and safety of Plaintiff's and other users and consumers, knowing the dangerous characteristics and propensities of said asbestos products, but still depriving those affected by the dangers from information about those dangers.

42. Because the defendants acted maliciously, willfully, wantonly, and recklessly, or with gross negligence, in marketing their hazardous asbestos and asbestos-containing products, in ignoring the medical and scientific data which was available to them, and depriving consumers, users, and the general public from that medical and scientific data, the plaintiff is entitled to compensatory damages.

WHEREFORE, the plaintiff, Charles Clayton, demands punitive damages in addition to the damages demanded in Counts I through IV, plus interest and costs.

Plaintiff demands a trial by jury on all issues.

DATED: March 18, 2005

Respectfully submitted,



Brad J. Mitchell  
(BBO #539845)  
THORNTON & NAUMES, LLP  
100 Summer Street, 30th floor  
Boston, MA 02110  
(617) 720-1333



JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Charles Clayton

(b) County of Residence of First Listed Plaintiff Norfolk County, MA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thornton & Naumes, 100 Summer Street, 30th Floor, Boston, MA 02110  
(617) 720-1333**DEFENDANTS**

Metropolitan Life Insurance Co., et. al.

County of Residence of First Listed Defendant New York, New York

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

See Attachment

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |   |   |   |
|---|---|---|---|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 | Foreign Nation  | PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input checked="" type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1331

Brief description of cause:

Personal injury action from exposure to asbestos and asbestos-containing materials.

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

5/23/05

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Charles Clayton v. Metropolitan Life Insurance Co.
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases  
740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?  
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)  
YES ☐ NO ☒  
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?  
YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?  
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).  
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?  
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?  
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)  
YES ☐ NO ☒
- (PLEASE TYPE OR PRINT)  
ATTORNEY'S NAME Charles K. Mone  
ADDRESS One Constitution Plaza, Boston, MA 02110  
TELEPHONE NO. (617) 241-3000

05 cv 11078 DPW

Clayton v. Metropolitan Life Insurance Co., et. al.

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05 cv 11078 DPW

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